



General Assembly

Amendment

January Session, 2011

LCO No. 6826

SB0097306826SD0

Offered by:

SEN. PRAGUE, 19th Dist.

SEN. KELLY, 21st Dist.

To: Subst. Senate Bill No. 973

File No. 331

Cal. No. 222

**"AN ACT CONCERNING THE DETERMINATION OF UNDUE
HARDSHIP FOR PURPOSES OF MEDICAID ELIGIBILITY."**

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

3 "Section 1. (NEW) (*Effective July 1, 2011*) (a) Except as provided in
4 subsection (c) of this section, the Commissioner of Social Services shall
5 not impose a penalty period pursuant to subsection (a) of section 17b-
6 261 of the general statutes or subsection (a) of section 17b-261a of the
7 general statutes if such imposition would create an undue hardship.

8 (b) For purposes of this section, "undue hardship" exists when (1)
9 the life or health of the applicant would be endangered by the
10 deprivation of medical care, or the applicant would be deprived of
11 food, clothing, shelter or other necessities of life, (2) the applicant is
12 otherwise eligible for medical assistance under section 17b-261 of the
13 general statutes but for the imposition of the penalty period, (3) if the
14 applicant is receiving long-term care services at the time of the

15 imposition of a penalty period, the provider of long-term care services
16 has notified the applicant that such provider intends to discharge or
17 discontinue providing long-term care services to the applicant due to
18 nonpayment, (4) if the applicant is not receiving long-term care
19 services at the time of the imposition of a penalty period, a provider of
20 long-term care services has refused to provide long-term care services
21 to the applicant due to the imposition of a penalty period, and (5) no
22 other person or organization is willing and able to provide long-term
23 care services to the applicant.

24 (c) The commissioner shall impose a penalty period pursuant to
25 subsection (a) of section 17b-261 of the general statutes or subsection
26 (a) of section 17b-261a of the general statutes if (1) the applicant made
27 a transfer or assignment of assets to deliberately impoverish such
28 applicant in order to obtain or maintain eligibility for medical
29 assistance, or (2) the transfer or assignment of assets was made by the
30 applicant's legal representative or the joint owner of the assets. The
31 commissioner may waive the imposition of a penalty period pursuant
32 to this subsection if (A) the applicant suffers from dementia or other
33 cognitive impairment and cannot explain the transfer or assignment of
34 assets, (B) the applicant suffered from dementia or other cognitive
35 impairment at the time the transfer or assignment of assets was made,
36 (C) the applicant was exploited into making the transfer or assignment
37 of assets due to dementia or other cognitive impairment, or (D) the
38 applicant's legal representative or the record owner of a jointly held
39 asset made the transfer or assignment of assets without the
40 authorization of the applicant.

41 Sec. 2. (NEW) (*Effective July 1, 2011*) (a) As used in this section and
42 section 1 of this act, "applicant" means an applicant for or recipient of
43 medical assistance pursuant to section 17b-261 of the general statutes.

44 (b) If the Commissioner of Social Services, in determining an
45 applicant's eligibility for medical assistance pursuant to section 17b-
46 261 of the general statutes, intends to impose a penalty period as a
47 result of a transfer or assignment of assets pursuant to section 17-261 of

48 the general statutes or section 17b-261a of the general statutes, the
49 commissioner shall provide a preliminary notice to the applicant. Such
50 notice shall include a statement that the applicant may contest the
51 imposition of a penalty period by (1) filing a claim of undue hardship,
52 as defined in section 1 of this act, or (2) providing evidence to rebut the
53 presumption resulting in the imposition of a penalty period pursuant
54 to subsection (a) of section 17b-261a of the general statutes. The
55 applicant shall have fifteen days after the date on which the
56 preliminary notice is postmarked to contest the imposition of a penalty
57 period indicated in such preliminary notice. The commissioner shall
58 grant one extension of time to file such claim or provide such evidence
59 if requested by the applicant and shall grant additional extensions of
60 time if reasonable. Failure to file a claim of undue hardship under this
61 subsection shall not prohibit an applicant from making a claim of
62 undue hardship at an administrative hearing.

63 (c) If the applicant contests the imposition of a penalty period
64 pursuant to subsection (b) of this section, the commissioner shall
65 provide an interim decision notice to the applicant not later than ten
66 days after the applicant files a claim or provides evidence pursuant to
67 subsection (b) of this section. The interim decision notice shall denote
68 the commissioner's decision to either reverse or uphold the imposition
69 of a penalty period indicated in the preliminary notice. If the
70 commissioner decides to uphold the imposition of a penalty period,
71 the interim decision notice shall specify the projected commencement
72 and expiration dates of such penalty period.

73 (d) When the commissioner determines the eligibility of an
74 applicant for medical assistance under section 17b-261 of the general
75 statutes, the commissioner shall provide a final decision notice to the
76 applicant. Such final decision notice shall include (1) a statement
77 confirming any determination the commissioner made with regard to
78 the imposition of a penalty period pursuant to this section, and (2) a
79 description of the applicant's appeal rights.

80 (e) If, during the course of a penalty period, an applicant receives

81 notice from a provider of long-term care services that the provider
82 intends to (1) discharge the applicant, (2) discontinue providing long-
83 term care services to the applicant, or (3) refuses to provide long-term
84 care services to the applicant because of the imposition of a penalty
85 period against the applicant pursuant to subsection (a) of section 17b-
86 261 of the general statutes or subsection (a) of section 17b-261a of the
87 general statutes, the applicant shall have not more than sixty days after
88 receiving such notice to file a claim of undue hardship with the
89 commissioner. Not later than ten days after receiving such claim, the
90 commissioner shall provide a final decision notice to the applicant.
91 Such final decision notice shall inform the applicant whether or not (A)
92 the commissioner has determined that undue hardship exists, and (B)
93 the penalty period shall be waived.

94 (f) (1) A nursing home, on behalf of an applicant, may request an
95 extension of time to claim undue hardship pursuant to subsections (b)
96 and (e) of this section if (A) the applicant is receiving long-term care
97 services in such nursing home, (B) the applicant has no legal
98 representative, and (C) the nursing home provides certification from a
99 physician that the applicant is incapable of caring for himself or
100 herself, as defined in section 45a-644 of the general statutes, or
101 incapable of managing his or her affairs, as defined in section 45a-644
102 of the general statutes. The commissioner shall grant such request to
103 allow a legal representative to be appointed to act on behalf of the
104 applicant.

105 (2) The commissioner shall accept any claim filed pursuant to
106 subsection (b) of this section by a nursing home and allow the nursing
107 home to represent the applicant with regard to such claim if the
108 applicant or the legal representative of the applicant gives permission
109 to the nursing home to file a claim pursuant to subsection (b) of this
110 section."

<p>This act shall take effect as follows and shall amend the following sections:</p>
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Section 1	<i>July 1, 2011</i>	New section
Sec. 2	<i>July 1, 2011</i>	New section